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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/035,334 | 01/04/2002 | Michael Wiedeman | 011715 | 2251 |

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| EXAMINER |
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BARFIELD, ANTHONY DERRELL

| ART UNIT | PAPER NUMBER |
|----------|--------------|
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3636

DATE MAILED: 02/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/035,334

Applicant(s)

WIEDEMAN ET AL.

Examiner

Anthony D Barfield

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 05 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-30 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

- I. Claims 1-30 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. There is inconsistency between the preamble and portions of the body of the claims as the applicant has claimed a seat for a vehicle the in the preambles of claims 1,14,25,28 and then positively recites the vehicle including portions thereof as part of the invention. Applicant must clarify what the claims are drawn to i.e. the seat or the combination of the seat and vehicle. Consequently the claims are examined in view of the seat only. In claim 1, the phrase "the floor to the of the vehicle" renders the claim unclear and confusing. In claim 14, applicant recites the use of left and right lower ribs and then states "a seat bottom directly fixed to and supported by each of said lower ribs" , which is unclear and confusing as the applicant has not shown a seat bottom connected to both the left and right lower ribs. Applicant must clarify.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1,6-8,10,12,25 and 28 as best understood are rejected under 35 U.S.C. 102(e) as being anticipated by Lohr et al. Lohr et al. shows the use of a central pillar (11), a center support (7) extending forwardly therefrom, a lower rib (5) and an intermediate rib (5) extend laterally from the central pillar in order to respectively support a seat bottom (8) and back (9) thereon. Lohr et al. shows the use of a grab handle (25) on an outer edge of the seat back. There is an opening (formed by the frame (3,4) and ribs) in the seat back and seat bottom prior to the cushion being applied (see Fig, 4).

Allowable Subject Matter

4. Claims 2-3,9,11,13, 26-27 and 29-30 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

5. Claims 14-24 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Response to Arguments

6. Applicant's arguments filed 11/05/04 have been fully considered but they are not persuasive. In response to applicant's argument that the claims are drawn to a seat in the "environment" of a vehicle having a floor and roof, applicant needs to positively state whether or not the vehicle is part of the invention. Applicant needs to clearly state whether or not the invention is the combination of a vehicle and seat or just the subcombination of a "seat" "adapted" or "for use with a vehicle". It appears that the applicant intends to claim the subcombination, therefore the applicant needs to claim that pillar is "adapted to" or "configured to be" used within a vehicle in order to extend from a floor to a roof of the vehicle or similar language for clarity. Applicant is reminded that just because the "environment" is recited in a claimed invention does not imply the "environment" is part of the invention unless **"positively stated"** and not **"functionally"** stated, which is considered to be intended use recitation. A recitation of the intended use of the claimed invention **must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.** In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 370 F.2d 576, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 312 F.2d 937, 939, 136 USPQ 458, 459 (CCPA 1963). Consequently, the claims remain unclear as to whether or not applicant is positively claiming the seat only or the combination of the seat and vehicle.

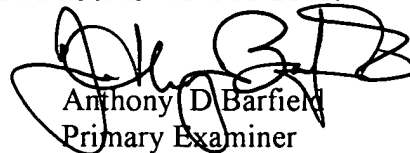
7. In response to applicant's arguments that "Lohr does not disclose a central pillar", the examiner is of the opinion that in regards to the **"intended use of applicant's invention"**, the

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central pillar (11). as taught by Lohr could in fact be disposed in a central area of the vehicle and have another seating area disposed on the opposing side of the pillar, which is common and inherent in many mass transit vehicles. Applicant is reminded that there does not have to be stated disclosure by Lohr of a central pillar but what would "one of ordinary skill in the art" glean from the disclosure of Lohr who shows a pillar with a lateral rib, which is in accordance so far, as defined by the claimed invention.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony D Barfield whose telephone number is 703-308-2158.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-2168.


Anthony D Barfield
Primary Examiner
Art Unit 3636

adb
February 5, 2005